IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.698 OF 2005

Kallappa Dharma Birajdar since
deceased through LRs .. Appellants

Versus

Genappa Girmal Birajdar .. Respondent

Mr.M.D.Parab i/b A.K.Suryawanshi for appellants

CORAM : P.V.KAKADE, J.

DATE : 10TH AUGUST, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by Addl. District Judge, Solapur dated 28.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Solapur decreeing the suit for perpetual injunction against the defendants.

2. I have heard the learned counsel for the

appellants. Perused the record.

3. The plaintiff has filed the suit for perpetual injunction against the defendants on the ground that the suit well is exclusively owned by him and defendants have no right, title and interest therein and his possession is obstructed in respect of the said Well and hence the suit came to be filed. The defendants contested the suit on various grounds and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that that the plaintiff had proved that he owned the suit well exclusively, which was located in the land of Survey No.50/1 exclusively owned by the plaintiff and as such the defendants had no right, title and interest therein and hence the suit for perpetual injunction came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the trial court were just, legal and proper and therefore, dismissed the appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. Perusal of the entire record shows that the suit well is situated in land of Block No.50/1, which is exclusively owned by the plaintiff. Evidently there is one more common well on the boundary of Block No.50/1 and 50/2 and both the parties in their pleadings as well as in the evidence have clearly conceded that the common well is in existence and is located on the boundaries of the land of both the parties. The case of the defendants was that they had also share in the suit well located in the land of Block No.50/1, however, it is clear from the record that there were partitions amongst the parties in the year 1983 and land of Block No.50/1 and well located therein went to the exclusive share of the plaintiff. The claim of the defendants that they had common right in the said well is not supported by any cogent evidence and as such both the courts below have concurrently recorded findings to the effect that the defendants have failed to establish their contentions whereas the plaintiff had proved his exclusive right and title to the suit property.

. In the result the appeal has no merits and

stands dismissed. Consequently Civil Application No.1190 of 2005 also stands dismissed.